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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

In Re Application of: Petite, Thomas D.	Group Art Unit: 2876
Filed: August 7, 1997	Examiner: Kim Ahshik
Serial No.: 08/910,980	Docket No. 81607-1012
For: **TRANSMITTER FOR AUTOMATICALLY COMMUNICATING INFORMATION TO A COMMUNICATION DEVICE**	

Certificate of Mailing
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop Appeal Brief; Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on October 6, 2003.

H. Chin Barnhill

Signature – Hui Chin Barnhill

APPEAL BRIEF UNDER 37 C.F.R. §1.192

Mail Stop - Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the decision of Examiner Ahshik Kim, Group Art Unit 2876, of July 21, 2003 (Paper No. 20), rejecting claims 17-36 in the present application and making the rejection FINAL.

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I. REAL PARTY IN INTEREST

The real party in interest of the instant application is StatSignal Systems, Inc., a corporation, having its principal place of business at 2859 Paces Ferry Road, Suite 700, Atlanta, Georgia 30339.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF THE CLAIMS

All pending claims 17-36 stand rejected. Specifically, the FINAL Office Action rejects claims 17-27 and 30-36 under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent 5,189,287 to Parienti (hereafter "*Parienti*"). The FINAL Office Action rejects claims 28 and 29 under 35 U.S.C. §103(a) as allegedly unpatentable over *Parienti* in view of U.S. Patent No. 5,550,358 to Tate *et al.* (hereafter "*Tate*"). For the reasons set further herein, Applicant respectfully requests that these rejections be overturned.

IV. STATUS OF AMENDMENTS

No claim amendments have been submitted after the FINAL Office Action, and all claim amendments submitted prior to that have been entered.

V. SUMMARY OF THE INVENTION

The present invention is generally directed to a system for providing the transmission of user identification (*e.g.,* account/billing information) to a communicating device, such as a telephone. In accordance with one aspect of the invention, the system includes a telephone (FIG. 1B, 11), and receiving means (FIG. 1A, 18; FIG. 2, 50) provided at the telephone for receiving

data transmitted via electromagnetic waves. Although not necessary for the invention, in a preferred embodiment, the telephone includes a card reader (FIG. 1A, 14) for receiving and reading magnetically encoded cards. In this embodiment, the receiving means is operatively and electrically connected to the card reader, so as to allow the system to operate either by access from a remote transmitter (FIG. 2, 48) or by way of an inserted card. The system of the invention further includes a remote access unit (FIG. 2, 20) having a memory (FIG. 2, 42) configured to store user identification data and a low-power transmitter adapted to transmit the user identification data to the receiving means. The remote access unit is manually operated by a transmit button (FIG. 2, 22), which, when depressed, causes a controller (FIG. 2, 46) to retrieve user identification data from the memory and transmit the user identification data from the low-power transmitter.

In accordance with the invention, the remote access device communicates information to a communicating device, such as a telephone. However, the device could more broadly be a computer/modem, an ISDN converter, a cable box, *etc.* For example, a computer user dialing out to a remote, or long distance location, may supply the modem with the calling card number for billing simply by pressing the transmit button. In a similar fashion, billing information may be communicated to a cable box. Recent technology developments are expanding the use of cable services, and two-way interactive cable services are rapidly approaching. In such uses, depending upon the application, it may be desirable to transmit billing or account information from a customer premise. A transmitter, constructed in accordance with the invention, may be used to provide this capability.

VI. CONCISE STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

The issue in this appeal is whether claims 17-27 and 30-36 are unpatentable as anticipated under 35 U.S.C. §102(b) over *Parienti*, and whether claims 28 and 29 are unpatentable as obvious under 35 U.S.C. §103(a) over *Parienti* in view of *Tate*.

VII. GROUPING OF THE CLAIMS

The claims are divided into three (3) claim groupings, as set out below. For purposes of the argument set forth in this Appeal Brief, one claim from each group will be evaluated and discussed in connection with the prior art. The claim groups include:

(1) Claim Group I, which comprises claims 17-25 and 30-35;
(2) Claim Group II, which comprises claims 26-29; and
(3) Claim Group III, which comprises claim 36.

Reasons that Claim Groups Do Not Stand or Fall Together

Although, in reality, all claims of an application are distinct, Applicant has grouped the claims of the present application into three (3) distinct claim groups. **One claim for each group has been chosen as the exemplary claim.** The reason that the claims for any given group do not stand or fall with any claims of another group is, ultimately, because they are of differing scope. This differing scope is more specifically set out below.

In regard to Claim Group I, claim 17 (the exemplary claim) is broadly directed to a system for transmitting billing information to a communication device in which a remote access unit includes a memory configured to store user identification data required to access the communication device. If the Board of Patent Appeals determines that claim 17 patentably

defines over the cited art of record, then, claims 17-25 and 30-35 should be allowed independent of the treatment of the other claim groups.

In regard to Claim Group II, claim 26 (the exemplary claim) is directed toward a method for transmitting information to a communication device including the step of retrieving user identification information from an internal memory of a remote access unit, in which the user identification information is required to access the communication device. If the Board of Patent Appeals determines that claim 26 patently defines over the cited art of record, then claims 26-29 should be allowed independent of the treatment of the other claim groups.

Finally, in regard to Claim Group III, claim 36 (the exemplary claim) is directed towards a system for providing remote access to a communication device, including a financial institution, wherein the communication device is disposed for communication with the financial institution via a telecommunication link. The system also includes a remote access device having a single user-depressible button and a controller configured to control a transmitter to transmit track I and track II data in direct response to a manual depression of the user depressible button. If the Board of Patent Appeals determines claim 36 patently defines over the cited art of record, then claim 36 should be allowed independent of the treatment of the other claim groups.

VIII. ARGUMENT

Outline of Argument ***Page #***

A. Discussion of Claim Group I

The FINAL Office Action rejects claim 17 under 35 U.S.C. § 102(b) as allegedly anticipated by *Parienti*. For the reasons set forth below, Applicant respectfully submits that the rejection should be overturned.

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of *each element* of the claims under consideration." *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983) (*emphasis added*). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(b).

In the present case, not every feature of the claimed invention is represented in *Parienti*. Claim 17 recites the limitation of "a manually operated transmit button." (Office Action, pg. 2). The Office Action admits that "Parienti does not explicitly suggest of [sic] a transmit button." However, the Office Action alleges "the unit 1 is capable of transmitting and receiving the data from the host or exchange data with other portable units (col. 4, lines 1-30)." (Office Action, pg. 2). Further, the Office Action alleges "[i]n triggering such transmittal and/or receipt of data, the device *should have a key* (may be a hard key or a soft key) to initiate data transmission." (Office Action, pg. 2-3, *emphasis added*).

For a proper rejection under 35 U.S.C. §102, the burden is on the Patent Office to show that **each and every** claimed feature of the claimed invention is represented in the applied reference to constitute a proper rejection. Here, the Office Action goes so far as to admit that the feature of a **manually operated transmit button** is not shown. For this reason alone, the rejection under 35 U.S.C. §102 is improper and should be overturned.

Even assuming *arguendo*, that the rejection is proper, the Applicant disagrees with the allegation in the FINAL Office Action that the "device should have a key ... to initiate data transmission." For example, the detailed description of *Parienti* states that "when the user has to pass through different gates or an access passage 20 to embark on the plane, a permanent specialized terminal 11 will emit an infrared signal, recognized by the portable casing 1 as an invitation to transmit the elements concerning the flight chosen and confirmed by the user during the acoustic transmission described previously." (col. 3, lines 21-28). Thus, in the example given in the detailed description, the portable casing does not use a "**manually operated transmit button,**" but rather merely responds to an invitation to transmit from terminal 11.

Furthermore, based on the *Parienti* disclosure, it simply is not possible to ascertain whether the reference contains a manually operated transmit button. For example, it is certainly conceivable, that each portable casing is programmed to continually ping a compatible device without the intervention of a "manually operated transmit button."

Thus, at a minimum, the rejection is improper for the reason that the required limitation of a "manually operated transmit button" is not explicitly taught by *Parienti*. But even more, *Parienti* specifically recites that "terminal 11," rather than the portable casing, initiates the communication by "emit(ting) an infrared signal, recognized by the portable casing." Thus, the recited limitation of a "manually operated transmit button" is not taught, suggested or disclosed by *Parienti*. Accordingly, and for at least these reasons, the Applicant respectfully submits that independent claim 17 patently defines over *Parienti* and therefore should be allowed. For at least this independent reason, the rejection of claim 17 is legally insufficient, substantively misplaced, and should be overturned.

As a separate and independent basis of patentability, *Parienti* does not teach, suggest, or disclose "**user identification data**" as recited in claim 17. It is helpful to highlight at least three relevant claim limitations related to the claimed "user identification data." First, the system of claim 17 includes a remote access unit with "a *memory configured to store user identification data*"; second, the user identification data is "required to *access the communication device*"; and third, the remote access unit includes "a low-power transmitter adapted to *transmit the user identification data* to the receiving means associated with the communication device."

In rejecting claim 17, the FINAL Office Action merely alleges that the "portable unit contains [sic] memory area to retain *permanent data relating to the user.*" (Office Action, pg. 2, *emphasis added*). The FINAL Office Action also alleges that *Parienti* discloses that the claimed user identification data may also be a "credit card or bank card." (Office Action, pg. 5). This is the sum total of the reasoning that the "permanent data relating to the user" and/or the "credit card or bank card" corresponds to, and fulfills, the claim limitations of the "user identification data" listed above.

First, in describing how the alleged remote device communication is enabled, *Parienti* discloses, at most, that a "subscriber will receive ... a new chip every six months" (col. 2, lines 28-30) and "once the removable chip 3 is snapped on, the apparatus will be able to communicate all kinds of data, at the request of the user, relating, for example, to the flights of an airline that could interest the subscriber." (col. 3, lines 31-34). Thus, *Parienti* apparently discloses using a "subscription" chip to unlock transmission capabilities. This concept of a subscription chip, which does not include any "user identification data," is not the same as the limitation of "user identification data required to access the communication device."

Even assuming *arguendo*, that the subscription chip does contain user identification data, *Parienti* does not disclose "a low-power transmitter adapted to *transmit* the user identification data to the receiving means." *Parienti* discloses, at most, that once the memory chip unlocks transmission capabilities "the apparatus will be able to communicate all kinds of data, at the request of the user, relating, for example, to the flights of an airline that could interest the subscriber." (col. 2, lines 31-34). The subscription chip of *Parienti* merely unlocks the communication capability to services such as retrieving airline flights, but no user information from the subscription chip is transmitted in doing so. *Parienti*, thus, does not disclose a transmitter used to "transmit user identification data to the receiving means" as in claim 17.

Further, while *Parienti* discloses that "one of the chips, functioning as permanent memory means, will remain permanently on the card, and will be able to retain permanent data, such as user information ..." (col. 2, lines 18-21), *Parienti* does not disclose that this user information is "required to access the communication device."

The FINAL Office Action also apparently suggests that *Parienti* teaches using a "credit card or bank card," and that this bank card is the equivalent of the claimed user identification data. (Office Action, pg. 5). However, *Parienti* teaches, at most, to "replace the chip card 2 in the card slot 10 of the portable casing 1 with a bank card 15 with chips, or with any other credit card ... ." (col. 3, lines 50-53). Again, *Parienti* does not disclose that this "credit card" is used to "access the communication device" as required by claim 17. Instead, *Parienti* discloses, at most, "a long distance payment will be done by virtue of an acoustic interface, similar to that of the data transfer, during the reservation phase described previously, whereby data is transmitted ... to computer center 18." (col. 3, lines 55-60). Thus, while *Parienti* appears to teach a "long

distance payment," this is not the same as "user identification data required to **access** the communication device."

In contrast to *Parienti*, the "user identification data" of claim 17 is used to "access the communication device." For example, as explained in the Applicants' disclosure, "[t]he transmitter ... broadly operates to transmit an electromagnetic signal 30 to a receiver located at the AFTM 10, wherein said electromagnetic signal is *encoded with user identifying information to allow a user to gain access to the AFTM* 10." (*Emphasis added*, pg. 9, lines 2-5). Thus, *Parienti* does not teach, suggest, or disclose the "user identification data" as expressly limited by claim 17, and for at least this additional reason, the rejection of claim 17 is legally insufficient, substantially misplaced, and should be overturned.

B. Discussion of Claim Group II

The FINAL Office Action rejects claim 26 under 35 U.S.C. § 102(b) as allegedly anticipated by *Parienti*. For the reasons set forth below, Applicant respectfully submits that the rejection should be overturned.

In the present case, not every feature of the claimed invention is represented in *Parienti*. *Parienti* does not teach, suggest, or disclose "**user identification data**" as recited in claim 26. It is helpful to highlight at least three relevant claim limitations related to the claimed "user identification data." The method of claim 26 includes, first, "retrieving predefined *user identification information from an internal memory of a remote access unit;*" second, "... the *user identification information is required to access the communication device;*" and third, the

method includes "transmitting a low-power electromagnetic signal, *comprising the formatted user identification information*, to the communication device."

In rejecting claim 26, the FINAL Office Action merely alleges that the "portable unit contains [sic] memory area to retain permanent data relating to the user." (Office Action, pg. 2, *emphasis added*). The FINAL Office Action also alleges that *Parienti* discloses that the claimed user identification data may also be a "credit card or bank card." (Office Action, pg. 5). This is the sum total of the reasoning that the "permanent data relating to the user" and/or the "credit card or bank card" corresponds to, and fulfills, the claim limitations of the "user identification data" listed above.

First, in describing how the alleged remote device communication is enabled, *Parienti* discloses, at most, that a "subscriber will receive, for example, a new chip every six months" (col. 2, lines 28-30), and "once the removable chip 3 is snapped on, the apparatus will be able to communicate all kinds of data, at the request of the user, relating, for example, to the flights of an airline that could interest the subscriber." (col. 3, lines 31-34). Thus, *Parienti* apparently discloses using a "subscription" chip to unlock transmission capabilities. This concept of a subscription chip, which does not mention any "user identification data," is not the same as the limitation that "the user identification information is required to access the communication device" as in claim 26.

Even assuming, *arguendo*, that the subscription chip does contain user identification data, *Parienti* does not disclose "a low-power transmitter adapted to *transmit* the user identification data to the receiving means." *Parienti* discloses, at most, that once the memory chip unlocks transmission capabilities "the apparatus will be able to communicate all kinds of data, at the

request of the user, relating, for example, to the flights of an airline that could interest the subscriber." (col. 2, lines 31-34). The subscription chip of *Parienti* merely unlocks the communication capability to services such as retrieving airline flights, but no user information from the subscription chip is transmitted in doing so. *Parienti*, thus, does not disclose "transmitting a low-power electromagnetic signal, comprising the formatted user identification information" as in claim 26.

Further, while *Parienti* discloses that "one of the chips, functioning as permanent memory means, will remain permanently on the card, and will be able to retain permanent data, such as user information ..." (col. 2, lines 18-21), *Parienti* does not disclose that this "user information" is "required to access the communication device."

The FINAL Office Action also apparently suggests that *Parienti* teaches using a "credit card or bank card," and that this bank card is the equivalent of the claimed user identification data. (Office Action, pg. 5). However, *Parienti* teaches, at most, to "replace the chip card 2 in the card slot 10 of the portable casing 1 with a bank card 15 with chips, or with any other credit card ... ." (col. 3, lines 50-53). Again, *Parienti* does not disclose that this "credit card" is used to "access the communication device" as required by claim 26. Instead, *Parienti* discloses, at most, "a long distance payment will be done by virtue of an acoustic interface, similar to that of the data transfer, during the reservation phase described previously, whereby data is transmitted ... to computer center 18." (col. 3, lines 55-60). Thus, while *Parienti* appears to teach a "long distance payment," this is not the same as user identification data "required to **access** the communication device."

Unlike *Parienti*, the "user identification data" of claim 26 is used to "access the communication device." For example, as explained in the Applicants' disclosure, "[t]he transmitter ... broadly operates to transmit an electromagnetic signal 30 to a receiver located at the AFTM 10, wherein said electromagnetic signal is *encoded with user identifying information to allow a user to gain access to the AFTM* 10." (*Emphasis added*, pg. 9, lines 2-5). Thus, *Parienti* does not teach, suggest, or disclose "user identification data" as limited by claim 26, and for at least this additional reason, the rejection of claim 26 is legally insufficient, substantially misplaced, and should be overturned.

C. Discussion of Claim Group III

The FINAL Office Action rejects claim 36 under 35 U.S.C. § 102(b) as allegedly anticipated by *Parienti*. For the reasons set forth below, Applicant respectfully submits that the rejection should be overturned.

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of *each element* of the claims under consideration." *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983) (*emphasis added*). Therefore, every claimed feature of the claimed invention must be represented in the applied referenced to constitute a proper rejection under 35 U.S.C. § 102(b).

First, the FINAL Office Action's rejection of claim 36 fails to even allege that *Parienti* discloses the limitation of "**a financial institution**, wherein the communication device is disposed for communication with **the financial institution** via a telecommunication link" as recited in claim 36. *Parienti* discloses, at most, that terminals 1 and 11 communicate with a "computer center 18" (FIG. 6A) or an "access passage 20" (FIG. 8). Neither the computer

center 18, nor the access passage 20, are described in the detailed description as a "financial institution." Because *Parienti* does not disclose "a financial institution, wherein the communication device is disposed for communication with the financial institution via a telecommunication link" the rejection of claim 36 is legally insufficient, substantively misplaced, and should be overturned.

As a separate and independent basis for patentability, *Parienti* does not disclose "a controller configured to control the transmitter to transmit tract 1 and tract 2 data in direct response to a manual depression of **the user-depressible button**, without any verification of user identification data" as recited in claim 36. As explained in distinguishing claim group I, *Parienti* does not disclose a "user-depressible button" that operates to "transmit ... data in direct response to a manual depression of the user-depressible button." Because *Parienti* does not disclose this element, and for this reason alone, the rejection of claim 36 is legally deficient and should be overturned.

However, even assuming *arguendo*, that *Parienti* does disclose a "user-depressible button," *Parienti* does not disclose, and the rejection fails to even allege that *Parienti* discloses, "tract 1 and tract 2 data." Because *Parienti* does not disclose these additional features, and for this reason alone, the rejection of claim 36 is legally deficient and should be overturned.

Further, as explained extensively above in relation to claim group I, *Parienti* verifies the ability to access a remote device by using "subscription information" within a memory card inside the controller. However, claim 36 requires that a transmitter transmit tract 1 and tract 2 data "**without any verification of user-identification data.**" Thus, unlike the transmitter of claim 36, the device of *Parienti* apparently verifies the ability to communicate before

transmitting any data. In contrast, the transmitter of claim 36 requires that the data be sent "without any verification."

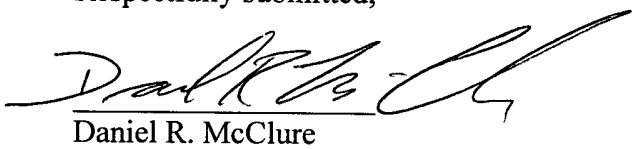
Accordingly, and for at least these independent reasons, the rejection of claim 36 is legally deficient, substantively misplaced, and should be overturned.

IX. CONCLUSION

Based upon the foregoing discussion, Applicant respectfully requests that the Examiner's final rejection of claims 17-36 be overruled and overturned by the Board, and that the application be allowed to issue as a patent with all pending claims 17-36.

A credit card authorization is enclosed herewith to cover the $165 fee for this Appeal Brief. No additional fees are believed to be due in connection with this Appeal Brief. If, however, any additional fees are deemed to be payable, you are hereby authorized to charge any such fees to deposit account No. 20-0778.

Respectfully submitted,



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X. APPENDIX

Claims

1 – 16. (Canceled)

17. A system for transmitting billing information to a communication device, comprising:

receiving means operatively associated with the communication device for receiving data transmitted via electromagnetic waves; and

a remote access unit having a memory configured to store user identification data required to access the communication device and a low-power transmitter adapted to transmit the user identification data to the receiving means when the remote access unit is within a close proximity to the receiving means, the remote access unit further comprising a manually-operated transmit button and a controller, responsive to the transmit button, to controllably retrieve user identification data from the memory and transmit the user identification data via the low-power transmitter.

18. The system as defined in claim 17, wherein the user identification data comprises a financial account number.

19. The system as defined in claim 17, wherein the user identification data comprises a long distancing billing account number.

20. The system as defined in claim 17, wherein the receiving means receives electromagnetic data in a wavelength selected from the group consisting of:

radio frequency;

ultrasonic; and

infra-red.

21. The system as defined in claim 17, wherein electronic circuitry that carries out the functionality of the remote access unit is contained within a single integrated circuit.

22. The system as defined in claim 17, wherein the remote access unit comprises means for formatting the user identification data into a data packet for transmission to the receiving means.

23. The system as defined in claim 17, wherein the remote access unit further comprises a second transmit button.

24. The system as defined in claim 17, wherein the communication device is one selected from the group consisting of: a telephone, a modem, an ISDN converter, and a cable box.

25. The system as defined in claim 17, wherein the close proximity is more specifically defined as meaning within several feet.

26. A method for transmitting information to a communication device, comprising the steps of:

retrieving predefined user identification information from an internal memory of a remote access unit, wherein the user identification information is required to access the communication device;

formatting the retrieved user identification information into a predefined signal for transmission to the communication device when the remote access unit is within a close proximity to the communication device; and

transmitting a low-power electromagnetic signal, comprising the formatted user identification information, to the communication device.

27. The method as defined in claim 26, further comprising the steps of:

extracting the user identification information contained within the transmitted signal; and

transmitting the extracted user identification information for authorization to access the communication device.

28. The method as defined in claim 27, further comprising the step of authorizing use of the communication device, based upon information received in response to the step of transmitting the extracted user identification information for authorization.

29. The method as defined in claim 26, wherein the step of transmitting a low-power electromagnetic signal comprises transmitting a low-power radio frequency signal.

30. A system for providing remote access to a communication device, comprising:

a receiver associated with the communication device and configured to receive data transmitted via electromagnetic waves;

a remote access unit having a memory configured to store user identification data required to access the communication device and a low-power transmitter adapted to transmit the user identification data to the receiver when the remote access unit is within a close proximity to the receiver, the remote access unit further comprising a manually-operated transmit button and a controller, responsive to the transmit button, to controllably retrieve user identification data from the memory and transmit the user identification data via the low-power transmitter.

31. The system as defined in claim 30, wherein the communication device comprises a magnetic card reader.

32. A computer readable storage medium containing program code for controlling the operation of a system for transmitting billing information to a communication device, comprising:

receiving means for receiving data transmitted via electromagnetic waves; and

a remote access unit having a memory configured to store user identification data required to access the communication device and a low-power transmitter adapted to transmit the user identification data to the receiving means when the remote access unit is within a close proximity to the receiving means, the remote access unit further comprising a manually-operated transmit button and a controller, responsive to the transmit button, to controllably retrieve user

identification data from the memory and transmit the user identification data via the low-power transmitter.

33. A computer readable storage medium containing program code for transmitting user identification information to a communication device, wherein the user identification information is required to access the communication device, the program code comprising the steps of:

depressing a manually-operative transmit button of a remote access unit;

retrieving predefined user identification information from an internal memory of the remote access unit;

formatting the retrieved user identification information into a predefined signal for transmission; and

transmitting a low-power electromagnetic signal, including the formatted user identification information, when the remote access unit is within a close proximity to the communication device.

34. The computer readable storage medium as defined in claim 33, wherein the program code further comprises the steps of:

extracting the user identification information contained within the transmitted signal; and

transmitting the extracted user identification information for authorization to access the communication device.

35. The computer readable storage medium of claim 34, wherein the program code further comprises the step of authorizing use of the communication device, based upon information received in response to the step of transmitting the extracted user identification information for authorization.

36. A system for providing remote access to a communication device, comprising:

a financial institution, wherein the communication device is disposed for communication with the financial institution via a telecommunication link;

a remote access device having a single user-depressible button, a memory configured to store user identification data required to access the communication device, a low-power transmitter, and a controller configured to control the transmitter to transmit track one and track two data in direct response to a manual depression of the user-depressible button, without any verification of user identification data, the controller being configured to control the transmitter to transmit a plurality of synchronization bits preceding the user identification data; and

a receiver disposed within the communication device, the receiver configured to receive information transmitted via electromagnetic waves, wherein the receiver is specifically configured to receive user identification data transmitted from the remote access unit by recognizing and synchronizing to the synchronization bits.

PATENT

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Filed: August 7, 1997	Examiner: Kim Ahshik
Serial No.: 08/910,980	Docket No. 81607-1012
For: **TRANSMITTER FOR AUTOMATICALLY COMMUNICATING INFORMATION TO A COMMUNICATION DEVICE**	

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop Appeal Brief; Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on October 6, 2003.

Signature – Hui Chin Barnhill

APPEAL BRIEF UNDER 37 C.F.R. §1.192

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P.O. Box 1450
Alexandria, VA 22313-1450

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The real party in interest of the instant application is StatSignal Systems, Inc., a corporation, having its principal place of business at 2859 Paces Ferry Road, Suite 700, Atlanta, Georgia 30339.

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V. SUMMARY OF THE INVENTION

The present invention is generally directed to a system for providing the transmission of user identification (*e.g.,* account/billing information) to a communicating device, such as a telephone. In accordance with one aspect of the invention, the system includes a telephone (FIG. 1B, 11), and receiving means (FIG. 1A, 18; FIG. 2, 50) provided at the telephone for receiving

data transmitted via electromagnetic waves. Although not necessary for the invention, in a preferred embodiment, the telephone includes a card reader (FIG. 1A, 14) for receiving and reading magnetically encoded cards. In this embodiment, the receiving means is operatively and electrically connected to the card reader, so as to allow the system to operate either by access from a remote transmitter (FIG. 2, 48) or by way of an inserted card. The system of the invention further includes a remote access unit (FIG. 2, 20) having a memory (FIG. 2, 42) configured to store user identification data and a low-power transmitter adapted to transmit the user identification data to the receiving means. The remote access unit is manually operated by a transmit button (FIG. 2, 22), which, when depressed, causes a controller (FIG. 2, 46) to retrieve user identification data from the memory and transmit the user identification data from the low-power transmitter.

In accordance with the invention, the remote access device communicates information to a communicating device, such as a telephone. However, the device could more broadly be a computer/modem, an ISDN converter, a cable box, *etc.* For example, a computer user dialing out to a remote, or long distance location, may supply the modem with the calling card number for billing simply by pressing the transmit button. In a similar fashion, billing information may be communicated to a cable box. Recent technology developments are expanding the use of cable services, and two-way interactive cable services are rapidly approaching. In such uses, depending upon the application, it may be desirable to transmit billing or account information from a customer premise. A transmitter, constructed in accordance with the invention, may be used to provide this capability.

VI. CONCISE STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

The issue in this appeal is whether claims 17-27 and 30-36 are unpatentable as anticipated under 35 U.S.C. §102(b) over *Parienti*, and whether claims 28 and 29 are unpatentable as obvious under 35 U.S.C. §103(a) over *Parienti* in view of *Tate*.

VII. GROUPING OF THE CLAIMS

The claims are divided into three (3) claim groupings, as set out below. For purposes of the argument set forth in this Appeal Brief, one claim from each group will be evaluated and discussed in connection with the prior art. The claim groups include:

(1) Claim Group I, which comprises claims 17-25 and 30-35;

(2) Claim Group II, which comprises claims 26-29; and

(3) Claim Group III, which comprises claim 36.

Reasons that Claim Groups Do Not Stand or Fall Together

Although, in reality, all claims of an application are distinct, Applicant has grouped the claims of the present application into three (3) distinct claim groups. **One claim for each group has been chosen as the exemplary claim.** The reason that the claims for any given group do not stand or fall with any claims of another group is, ultimately, because they are of differing scope. This differing scope is more specifically set out below.

In regard to Claim Group I, claim 17 (the exemplary claim) is broadly directed to a system for transmitting billing information to a communication device in which a remote access unit includes a memory configured to store user identification data required to access the communication device. If the Board of Patent Appeals determines that claim 17 patentably

defines over the cited art of record, then, claims 17-25 and 30-35 should be allowed independent of the treatment of the other claim groups.

In regard to Claim Group II, claim 26 (the exemplary claim) is directed toward a method for transmitting information to a communication device including the step of retrieving user identification information from an internal memory of a remote access unit, in which the user identification information is required to access the communication device. If the Board of Patent Appeals determines that claim 26 patently defines over the cited art of record, then claims 26-29 should be allowed independent of the treatment of the other claim groups.

Finally, in regard to Claim Group III, claim 36 (the exemplary claim) is directed towards a system for providing remote access to a communication device, including a financial institution, wherein the communication device is disposed for communication with the financial institution via a telecommunication link. The system also includes a remote access device having a single user-depressible button and a controller configured to control a transmitter to transmit track I and track II data in direct response to a manual depression of the user depressible button. If the Board of Patent Appeals determines claim 36 patently defines over the cited art of record, then claim 36 should be allowed independent of the treatment of the other claim groups.

VIII. ARGUMENT

Outline of Argument ***Page #***

A. Discussion of Claim Group I

The FINAL Office Action rejects claim 17 under 35 U.S.C. § 102(b) as allegedly anticipated by *Parienti*. For the reasons set forth below, Applicant respectfully submits that the rejection should be overturned.

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of *each element* of the claims under consideration." *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983) (*emphasis added*). Therefore, every claimed feature of the claimed invention must be represented in the applied reference to constitute a proper rejection under 35 U.S.C. § 102(b).

In the present case, not every feature of the claimed invention is represented in *Parienti*. Claim 17 recites the limitation of "a manually operated transmit button." (Office Action, pg. 2). The Office Action admits that "Parienti does not explicitly suggest of [sic] a transmit button." However, the Office Action alleges "the unit 1 is capable of transmitting and receiving the data from the host or exchange data with other portable units (col. 4, lines 1-30)." (Office Action, pg. 2). Further, the Office Action alleges "[i]n triggering such transmittal and/or receipt of data, the device *should have a key* (may be a hard key or a soft key) to initiate data transmission." (Office Action, pg. 2-3, *emphasis added*).

For a proper rejection under 35 U.S.C. §102, the burden is on the Patent Office to show that **each and every** claimed feature of the claimed invention is represented in the applied reference to constitute a proper rejection. Here, the Office Action goes so far as to admit that the feature of a **manually operated transmit button** is not shown. For this reason alone, the rejection under 35 U.S.C. §102 is improper and should be overturned.

Even assuming *arguendo*, that the rejection is proper, the Applicant disagrees with the allegation in the FINAL Office Action that the "device should have a key ... to initiate data transmission." For example, the detailed description of *Parienti* states that "when the user has to pass through different gates or an access passage 20 to embark on the plane, a permanent specialized terminal 11 will emit an infrared signal, recognized by the portable casing 1 as an invitation to transmit the elements concerning the flight chosen and confirmed by the user during the acoustic transmission described previously." (col. 3, lines 21-28). Thus, in the example given in the detailed description, the portable casing does not use a "**manually operated transmit button,**" but rather merely responds to an invitation to transmit from terminal 11.

Furthermore, based on the *Parienti* disclosure, it simply is not possible to ascertain whether the reference contains a manually operated transmit button. For example, it is certainly conceivable, that each portable casing is programmed to continually ping a compatible device without the intervention of a "manually operated transmit button."

Thus, at a minimum, the rejection is improper for the reason that the required limitation of a "manually operated transmit button" is not explicitly taught by *Parienti*. But even more, *Parienti* specifically recites that "terminal 11," rather than the portable casing, initiates the communication by "emit(ting) an infrared signal, recognized by the portable casing." Thus, the recited limitation of a "manually operated transmit button" is not taught, suggested or disclosed by *Parienti*. Accordingly, and for at least these reasons, the Applicant respectfully submits that independent claim 17 patently defines over *Parienti* and therefore should be allowed. For at least this independent reason, the rejection of claim 17 is legally insufficient, substantively misplaced, and should be overturned.

As a separate and independent basis of patentability, *Parienti* does not teach, suggest, or disclose "**user identification data**" as recited in claim 17. It is helpful to highlight at least three relevant claim limitations related to the claimed "user identification data." First, the system of claim 17 includes a remote access unit with "a *memory configured to store user identification data*"; second, the user identification data is "required to *access the communication device*"; and third, the remote access unit includes "a low-power transmitter adapted to *transmit the user identification data* to the receiving means associated with the communication device."

In rejecting claim 17, the FINAL Office Action merely alleges that the "portable unit contains [sic] memory area to retain *permanent data relating to the user.*" (Office Action, pg. 2, *emphasis added*). The FINAL Office Action also alleges that *Parienti* discloses that the claimed user identification data may also be a "credit card or bank card." (Office Action, pg. 5). This is the sum total of the reasoning that the "permanent data relating to the user" and/or the "credit card or bank card" corresponds to, and fulfills, the claim limitations of the "user identification data" listed above.

First, in describing how the alleged remote device communication is enabled, *Parienti* discloses, at most, that a "subscriber will receive ... a new chip every six months" (col. 2, lines 28-30) and "once the removable chip 3 is snapped on, the apparatus will be able to communicate all kinds of data, at the request of the user, relating, for example, to the flights of an airline that could interest the subscriber." (col. 3, lines 31-34). Thus, *Parienti* apparently discloses using a "subscription" chip to unlock transmission capabilities. This concept of a subscription chip, which does not include any "user identification data," is not the same as the limitation of "user identification data required to access the communication device."

Even assuming *arguendo*, that the subscription chip does contain user identification data, *Parienti* does not disclose "a low-power transmitter adapted to *transmit* the user identification data to the receiving means." *Parienti* discloses, at most, that once the memory chip unlocks transmission capabilities "the apparatus will be able to communicate all kinds of data, at the request of the user, relating, for example, to the flights of an airline that could interest the subscriber." (col. 2, lines 31-34). The subscription chip of *Parienti* merely unlocks the communication capability to services such as retrieving airline flights, but no user information from the subscription chip is transmitted in doing so. *Parienti*, thus, does not disclose a transmitter used to "transmit user identification data to the receiving means" as in claim 17.

Further, while *Parienti* discloses that "one of the chips, functioning as permanent memory means, will remain permanently on the card, and will be able to retain permanent data, such as user information ..." (col. 2, lines 18-21), *Parienti* does not disclose that this user information is "required to access the communication device."

The FINAL Office Action also apparently suggests that *Parienti* teaches using a "credit card or bank card," and that this bank card is the equivalent of the claimed user identification data. (Office Action, pg. 5). However, *Parienti* teaches, at most, to "replace the chip card 2 in the card slot 10 of the portable casing 1 with a bank card 15 with chips, or with any other credit card ... ." (col. 3, lines 50-53). Again, *Parienti* does not disclose that this "credit card" is used to "access the communication device" as required by claim 17. Instead, *Parienti* discloses, at most, "a long distance payment will be done by virtue of an acoustic interface, similar to that of the data transfer, during the reservation phase described previously, whereby data is transmitted ... to computer center 18." (col. 3, lines 55-60). Thus, while *Parienti* appears to teach a "long

distance payment," this is not the same as "user identification data required to **access** the communication device."

In contrast to *Parienti*, the "user identification data" of claim 17 is used to "access the communication device." For example, as explained in the Applicants' disclosure, "[t]he transmitter ... broadly operates to transmit an electromagnetic signal 30 to a receiver located at the AFTM 10, wherein said electromagnetic signal is *encoded with user identifying information to allow a user to gain access to the AFTM* 10." (*Emphasis added*, pg. 9, lines 2-5). Thus, *Parienti* does not teach, suggest, or disclose the "user identification data" as expressly limited by claim 17, and for at least this additional reason, the rejection of claim 17 is legally insufficient, substantially misplaced, and should be overturned.

B. Discussion of Claim Group II

The FINAL Office Action rejects claim 26 under 35 U.S.C. § 102(b) as allegedly anticipated by *Parienti*. For the reasons set forth below, Applicant respectfully submits that the rejection should be overturned.

In the present case, not every feature of the claimed invention is represented in *Parienti*. *Parienti* does not teach, suggest, or disclose "**user identification data**" as recited in claim 26. It is helpful to highlight at least three relevant claim limitations related to the claimed "user identification data." The method of claim 26 includes, first, "retrieving predefined *user identification information from an internal memory of a remote access unit;*" second, "... the *user identification information is required to access the communication device;*" and third, the

method includes "transmitting a low-power electromagnetic signal, *comprising the formatted user identification information*, to the communication device."

In rejecting claim 26, the FINAL Office Action merely alleges that the "portable unit contains [sic] memory area to retain permanent data relating to the user." (Office Action, pg. 2, *emphasis added*). The FINAL Office Action also alleges that *Parienti* discloses that the claimed user identification data may also be a "credit card or bank card." (Office Action, pg. 5). This is the sum total of the reasoning that the "permanent data relating to the user" and/or the "credit card or bank card" corresponds to, and fulfills, the claim limitations of the "user identification data" listed above.

First, in describing how the alleged remote device communication is enabled, *Parienti* discloses, at most, that a "subscriber will receive, for example, a new chip every six months" (col. 2, lines 28-30), and "once the removable chip 3 is snapped on, the apparatus will be able to communicate all kinds of data, at the request of the user, relating, for example, to the flights of an airline that could interest the subscriber." (col. 3, lines 31-34). Thus, *Parienti* apparently discloses using a "subscription" chip to unlock transmission capabilities. This concept of a subscription chip, which does not mention any "user identification data," is not the same as the limitation that "the user identification information is required to access the communication device" as in claim 26.

Even assuming, *arguendo*, that the subscription chip does contain user identification data, *Parienti* does not disclose "a low-power transmitter adapted to *transmit* the user identification data to the receiving means." *Parienti* discloses, at most, that once the memory chip unlocks transmission capabilities "the apparatus will be able to communicate all kinds of data, at the

request of the user, relating, for example, to the flights of an airline that could interest the subscriber." (col. 2, lines 31-34). The subscription chip of *Parienti* merely unlocks the communication capability to services such as retrieving airline flights, but no user information from the subscription chip is transmitted in doing so. *Parienti*, thus, does not disclose "transmitting a low-power electromagnetic signal, comprising the formatted user identification information" as in claim 26.

Further, while *Parienti* discloses that "one of the chips, functioning as permanent memory means, will remain permanently on the card, and will be able to retain permanent data, such as user information ..." (col. 2, lines 18-21), *Parienti* does not disclose that this "user information" is "required to access the communication device."

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Unlike *Parienti*, the "user identification data" of claim 26 is used to "access the communication device." For example, as explained in the Applicants' disclosure, "[t]he transmitter ... broadly operates to transmit an electromagnetic signal 30 to a receiver located at the AFTM 10, wherein said electromagnetic signal is *encoded with user identifying information to allow a user to gain access to the AFTM* 10." (*Emphasis added*, pg. 9, lines 2-5). Thus, *Parienti* does not teach, suggest, or disclose "user identification data" as limited by claim 26, and for at least this additional reason, the rejection of claim 26 is legally insufficient, substantially misplaced, and should be overturned.

C. Discussion of Claim Group III

The FINAL Office Action rejects claim 36 under 35 U.S.C. § 102(b) as allegedly anticipated by *Parienti*. For the reasons set forth below, Applicant respectfully submits that the rejection should be overturned.

It is axiomatic that "[a]nticipation requires the disclosure in a single prior art reference of *each element* of the claims under consideration." *W.L. Gore & Associates, Inc. v. Garlock, Inc.* 721 F.2d 1540, 1554, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983) (*emphasis added*). Therefore, every claimed feature of the claimed invention must be represented in the applied referenced to constitute a proper rejection under 35 U.S.C. § 102(b).

First, the FINAL Office Action's rejection of claim 36 fails to even allege that *Parienti* discloses the limitation of "**a financial institution**, wherein the communication device is disposed for communication with **the financial institution** via a telecommunication link" as recited in claim 36. *Parienti* discloses, at most, that terminals 1 and 11 communicate with a "computer center 18" (FIG. 6A) or an "access passage 20" (FIG. 8). Neither the computer

center 18, nor the access passage 20, are described in the detailed description as a "financial institution." Because *Parienti* does not disclose "a financial institution, wherein the communication device is disposed for communication with the financial institution via a telecommunication link" the rejection of claim 36 is legally insufficient, substantively misplaced, and should be overturned.

As a separate and independent basis for patentability, *Parienti* does not disclose "a controller configured to control the transmitter to transmit tract 1 and tract 2 data in direct response to a manual depression of **the user-depressible button**, without any verification of user identification data" as recited in claim 36. As explained in distinguishing claim group I, *Parienti* does not disclose a "user-depressible button" that operates to "transmit ... data in direct response to a manual depression of the user-depressible button." Because *Parienti* does not disclose this element, and for this reason alone, the rejection of claim 36 is legally deficient and should be overturned.

However, even assuming *arguendo*, that *Parienti* does disclose a "user-depressible button," *Parienti* does not disclose, and the rejection fails to even allege that *Parienti* discloses, "tract 1 and tract 2 data." Because *Parienti* does not disclose these additional features, and for this reason alone, the rejection of claim 36 is legally deficient and should be overturned.

Further, as explained extensively above in relation to claim group I, *Parienti* verifies the ability to access a remote device by using "subscription information" within a memory card inside the controller. However, claim 36 requires that a transmitter transmit tract 1 and tract 2 data "**without any verification of user-identification data.**" Thus, unlike the transmitter of claim 36, the device of *Parienti* apparently verifies the ability to communicate before

transmitting any data. In contrast, the transmitter of claim 36 requires that the data be sent "without any verification."

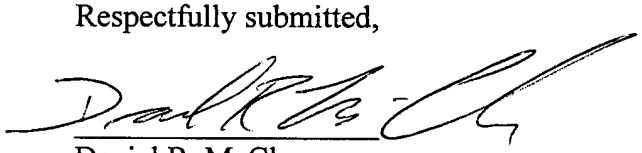
Accordingly, and for at least these independent reasons, the rejection of claim 36 is legally deficient, substantively misplaced, and should be overturned.

IX. CONCLUSION

Based upon the foregoing discussion, Applicant respectfully requests that the Examiner's final rejection of claims 17-36 be overruled and overturned by the Board, and that the application be allowed to issue as a patent with all pending claims 17-36.

A credit card authorization is enclosed herewith to cover the $165 fee for this Appeal Brief. No additional fees are believed to be due in connection with this Appeal Brief. If, however, any additional fees are deemed to be payable, you are hereby authorized to charge any such fees to deposit account No. 20-0778.

Respectfully submitted,



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X. APPENDIX

Claims

1 – 16. (Canceled)

17. A system for transmitting billing information to a communication device, comprising:

receiving means operatively associated with the communication device for receiving data transmitted via electromagnetic waves; and

a remote access unit having a memory configured to store user identification data required to access the communication device and a low-power transmitter adapted to transmit the user identification data to the receiving means when the remote access unit is within a close proximity to the receiving means, the remote access unit further comprising a manually-operated transmit button and a controller, responsive to the transmit button, to controllably retrieve user identification data from the memory and transmit the user identification data via the low-power transmitter.

18. The system as defined in claim 17, wherein the user identification data comprises a financial account number.

19. The system as defined in claim 17, wherein the user identification data comprises a long distancing billing account number.

20. The system as defined in claim 17, wherein the receiving means receives electromagnetic data in a wavelength selected from the group consisting of:

radio frequency;

ultrasonic; and

infra-red.

21. The system as defined in claim 17, wherein electronic circuitry that carries out the functionality of the remote access unit is contained within a single integrated circuit.

22. The system as defined in claim 17, wherein the remote access unit comprises means for formatting the user identification data into a data packet for transmission to the receiving means.

23. The system as defined in claim 17, wherein the remote access unit further comprises a second transmit button.

24. The system as defined in claim 17, wherein the communication device is one selected from the group consisting of: a telephone, a modem, an ISDN converter, and a cable box.

25. The system as defined in claim 17, wherein the close proximity is more specifically defined as meaning within several feet.

26. A method for transmitting information to a communication device, comprising the steps of:

retrieving predefined user identification information from an internal memory of a remote access unit, wherein the user identification information is required to access the communication device;

formatting the retrieved user identification information into a predefined signal for transmission to the communication device when the remote access unit is within a close proximity to the communication device; and

transmitting a low-power electromagnetic signal, comprising the formatted user identification information, to the communication device.

27. The method as defined in claim 26, further comprising the steps of:

extracting the user identification information contained within the transmitted signal; and

transmitting the extracted user identification information for authorization to access the communication device.

28. The method as defined in claim 27, further comprising the step of authorizing use of the communication device, based upon information received in response to the step of transmitting the extracted user identification information for authorization.

29. The method as defined in claim 26, wherein the step of transmitting a low-power electromagnetic signal comprises transmitting a low-power radio frequency signal.

30. A system for providing remote access to a communication device, comprising:

a receiver associated with the communication device and configured to receive data transmitted via electromagnetic waves;

a remote access unit having a memory configured to store user identification data required to access the communication device and a low-power transmitter adapted to transmit the user identification data to the receiver when the remote access unit is within a close proximity to the receiver, the remote access unit further comprising a manually-operated transmit button and a controller, responsive to the transmit button, to controllably retrieve user identification data from the memory and transmit the user identification data via the low-power transmitter.

31. The system as defined in claim 30, wherein the communication device comprises a magnetic card reader.

32. A computer readable storage medium containing program code for controlling the operation of a system for transmitting billing information to a communication device, comprising:

receiving means for receiving data transmitted via electromagnetic waves; and

a remote access unit having a memory configured to store user identification data required to access the communication device and a low-power transmitter adapted to transmit the user identification data to the receiving means when the remote access unit is within a close proximity to the receiving means, the remote access unit further comprising a manually-operated transmit button and a controller, responsive to the transmit button, to controllably retrieve user

identification data from the memory and transmit the user identification data via the low-power transmitter.

33. A computer readable storage medium containing program code for transmitting user identification information to a communication device, wherein the user identification information is required to access the communication device, the program code comprising the steps of:

depressing a manually-operative transmit button of a remote access unit;

retrieving predefined user identification information from an internal memory of the remote access unit;

formatting the retrieved user identification information into a predefined signal for transmission; and

transmitting a low-power electromagnetic signal, including the formatted user identification information, when the remote access unit is within a close proximity to the communication device.

34. The computer readable storage medium as defined in claim 33, wherein the program code further comprises the steps of:

extracting the user identification information contained within the transmitted signal; and

transmitting the extracted user identification information for authorization to access the communication device.

35. The computer readable storage medium of claim 34, wherein the program code further comprises the step of authorizing use of the communication device, based upon information received in response to the step of transmitting the extracted user identification information for authorization.

36. A system for providing remote access to a communication device, comprising:

a financial institution, wherein the communication device is disposed for communication with the financial institution via a telecommunication link;

a remote access device having a single user-depressible button, a memory configured to store user identification data required to access the communication device, a low-power transmitter, and a controller configured to control the transmitter to transmit track one and track two data in direct response to a manual depression of the user-depressible button, without any verification of user identification data, the controller being configured to control the transmitter to transmit a plurality of synchronization bits preceding the user identification data; and

a receiver disposed within the communication device, the receiver configured to receive information transmitted via electromagnetic waves, wherein the receiver is specifically configured to receive user identification data transmitted from the remote access unit by recognizing and synchronizing to the synchronization bits.